IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.2509 OF 2004

Modern Syntex India Limited Petitioner

versus

The Union of India and another Respondents

Mr.Aspi Chinoy, Paras Kuhad, Ms.Soma Singh, Mr.Manish Desai i/by Paras Kuhad & Associates, adv. for petitioner.

Mr.E.P.Bharucha with Ms.Mohana Nair, adv. for respondent no.2.

Mr.Y.S.Bhate, adv. for Respondent no.1.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 21st October 2004

PC :

Rule.

2. Learned counsel for respondents waive service. By consent, rule is made returnable forthwith.

3. Petitioner is a public limited company and is declared as a Sick Undertaking within the meaning of Section 3(1)(O) of Sick Industrial Companies (Special Provisions) Act, 1985. Respondent no.1 is Union of India. Respondent no.2 is Oriental

Bank of Commerce. By this petition, petitioner is seeking to issue an appropriate writ, order or direction directing respondents to forthwith defreeze Current Account of petitioner and to release amount of Rs.1,12,81,201.69 (Rs.One crore twelve lakh eighty one thousand two hundred one and Sixty nine paise) lying in said account to petitioner with compensatory costs.

4. Petitioner was operating Current Account No.2000101799 with Global Trust Bank Limited from about February 2000. Global Trust Bank was amalgamated with respondent no.2 bank in pursuance of a scheme sanctioned by the Central Government in exercise of powers u/s 45(7) of the Banking Regulations Act, 1949. It appears that in August 2004 petitioner issued a cheque bearing No.997997 dated 16th August 2004 for transfer of funds from this account in respondent no.2 bank to it’s account in UCO Bank. However, respondent no.2 bank dishonoured said cheque with remarks "Account Frozen". It is the case of petitioner that action of the bank in freezing the account is wholly illegal and inspite of its repeated request, respondent no.2 refused to furnish information as to why account was frozen and declined to allow petitioner to operate the account. Therefore, petitioner has approached this Court under Article 226 of the Constitution

of India.

5. The petition is resisted by respondent no.2 bank by filing counter affidavit of A.R.Raja Reddy. It is contended, inter alia, that respondent no.2 had on or about 15th August 2004 received a phone call from office of superintendent of Police, CBI, Bank Securities & Fraud Cell (hereinafter referred to as "the CBI") requesting respondent no.2 for details of accounts held by companies under Modern Group in respondent no.2 branch and requesting not to permit transactions in said accounts till further instructions as they were investigating a criminal case against the directors of Modern Group companies. Therefore, respondent no.2 returned petitioner’s cheque No.997997 for Rs.1,12,10,000/-. CBI thereafter in furtherance of its telephonic instructions vide its letters dated 17th August 2004 and 23rd August 2004 called upon respondent no.2 bank to stop payments of 14 Fixed Deposit Receipts (FDRs) belonging to 3 companies in Modern Group viz Modern Denim Limited, Modern Terry Towels Ltd. and Modern Insulators Ltd. and also called for further information with regard to said FDRs.. The defence is that bank account of the petitioner was frozen on instructions of CBI..

6. We have gone through letters issued by CBI.. It is an admitted position that petitioner is no way concerned with the FDRs belonging to three companies mentioned above and there is no direction by the CBI to freeze bank account of petitioner. Learned counsel for respondent no.2 also fairly stated that respondent no.2 had written to CBI about existence of other accounts of Modern Group maintained in it's Nariman Point Branch including current account of petitioner, which is subject matter of petition and requested instructions on the same. However, no instructions have been given by CBI.. It is thus an admitted position that there is no order for freezing of bank account of petitioner.

7. Learned counsel for respondent no.2, however, contended that respondent no.2 had granted various credit facilities to Modern Group companies and in respect of those loans respondent no.2 has filed Original Applications before Debt Recovery Tribunals, at Ahamedabad and Jaipur and those applications are pending adjudication. He sought to contend that respondent no.2 has a general lien on all accounts of Modern Group including FDRs set out in CBI's letters with a right to appropriate the amounts in the same towards their dues from Modern Group Companies against whom proceedings

have been filed before DRT.. Learned counsel was, however, unable to show how such a general lien can be exercised in respect of a separate and distinct company merely because it belongs to same group. Surely bank cannot claim a lien over accounts of petitioner for dues of its sister companies. Therefore, we do not see any justification for freezing of account of petitioner. We make the rule absolute in terms of prayer clauses (a) and (b). This order is, however, without prejudice to rights of respondent no.2 to adopt appropriate proceedings for attachment of the bank account, and observations made in this order shall not affect right of bank to adopt such remedy if permissible by law.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)